

1 BILL LOCKYER, Attorney General
of the State of California
2 KATHLEEN B.Y. LAM, State Bar No. 95379
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2091
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2757

13 RANDALL WOLFORD
2257 Haller Street
14 San Diego, CA 92104

**DEFAULT DECISION
AND ORDER**

15 Original Pharmacist License No. RPH 40106

[Gov. Code, §11520]

16 Respondent.
17

FINDINGS OF FACT

- 18 1. On or about November 22, 2004, Complainant Patricia F. Harris
19 ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy,
20 Department of Consumer Affairs, filed Accusation No. 2757 against RANDALL WOLFORD
21 ("Respondent") before the Board of Pharmacy.
22 2. On or about November 17, 1995, the Board of Pharmacy ("Board") issued
23 Pharmacist License No. RPH 40106 to Respondent. The license expires on September 30, 2005,
24 unless renewed.
25 3. On or about December 9, 2004, Mona S. Sebastian, an employee of the
26 Department of Justice, served by Certified Mail a copy of the Accusation No. 2757, Statement to
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
28

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 2257
2 Haller Street, San Diego, CA 92104. A copy of the Accusation, the related documents, and
3 Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. On or about December 13, 2004, the U.S. Postal Service delivered
7 Domestic Return Receipt No. 7003 1680 0006 9084 9562 to the Office of the Attorney General.
8 The receipt was signed by Randall J. Wolford on December 10, 2004. A copy of the Domestic
9 Return Receipt is attached to the Declaration of Service By Certified Mail, previously marked as
10 Exhibit A.

11 6. Business and Professions Code section 118 states, in pertinent part:

12 "(b) The suspension, expiration, or forfeiture by operation of law of a license
13 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
14 board or by order of a court of law, or its surrender without the written consent of the board, shall
15 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
16 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
17 any ground provided by law or to enter an order suspending or revoking the license or otherwise
18 taking disciplinary action against the license on any such ground."

19 7. Government Code section 11506 states, in pertinent part:

20 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
22 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
23 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

24 8. Respondent failed to file a Notice of Defense within 15 days after service
25 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
26 Accusation No. 2757.

27 9. California Government Code section 11520 states, in pertinent part:

28 "(a) If the respondent either fails to file a notice of defense or to appear at the

1 hearing, the agency may take action based upon the respondent's express admissions or
2 upon other evidence and affidavits may be used as evidence without any notice to
3 respondent."

4 10. Pursuant to its authority under Government Code section 11520, the Board
5 finds Respondent is in default. The Board will take action without further hearing and, based on
6 Respondent's express admissions by way of default and the evidence before it, contained in
7 Exhibit A, finds that the allegations in Accusation No. 2757 are true.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent RANDALL
10 WOLFORD has subjected his Pharmacist License No. RPH 40106 to discipline.

11 2. A copy of the Accusation and the related documents, Declaration of
12 Service and Domestic Return Receipt are attached.

13 3. The agency has jurisdiction to adjudicate this case by default.

14 4. The Board of Pharmacy is authorized to revoke Respondent's pharmacist
15 license based upon the following violations alleged in the Accusation:

16 a. Business and Professions Code section 4301(f) - commission of an
17 act involving moral turpitude, dishonesty, fraud, deceit, or corruption;

18 b. Business and Professions Code section 4301(k) - conviction of a
19 felony involving the use, consumption, or self-administration of any dangerous drug;

20 c. Business and Professions Code section 4301(l) - conviction of a
21 crime substantially related to the qualifications, functions, and duties of a pharmacist;

22 d. Business and Professions Code section 4301(j) - violation of state
23 statutes;

24 e. Business and Professions Code section 4301(h) - selling,
25 dispensing or compounding drugs while under the influence; and

26 f. Business and Professions Code section 490 - conviction of a crime
27 substantially related to the qualifications, functions, or duties of a pharmacist.

28 ///

5. The Board's reasonable costs of investigation and prosecution of this case are \$4585.

ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 40106 heretofore issued to Respondent RANDALL WOLFORD is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.


This Decision shall become effective on March 13, 2005.

It is so ORDERED February 11, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

80047830.wpd
DOJ docket number:SD2004800135

By


STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2757, Related Documents, Declaration of Service and Domestic Return Receipt

Exhibit A

Accusation No. 2757,
Related Documents, Declaration of Service and Domestic Return Receipt

1 BILL LOCKYER, Attorney General
of the State of California
2 KATHLEEN B.Y. LAM, State Bar No. 95379
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2091
Facsimile: (619) 645-2061

7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2757

12 RANDALL WOLFORD
13 2257 Haller Street
14 San Diego, CA 92104

A C C U S A T I O N

15 Original Pharmacist License No. RPH 40106

16 Respondent.

17 Complainant Patricia F. Harris ("Complainant") alleges:

18 PARTIES

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 17, 1995, the Board of Pharmacy issued Original
22 Pharmacist License Number RPH 40106 to RANDALL WOLFORD ("Respondent"). At all
23 times relevant to this case, the license was in full force and effect, and will expire on November
24 1, 2004, unless renewed.¹

25
26
27 1. On March 25, 2004, Respondent stipulated that he will not practice as a pharmacist until
28 the administrative matter relating to San Diego County Superior Court Case No. CD179018,
People of the State of California v. Randall Wolford, is completed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty; by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any

1 probationary certificate of licensure for any violation of the terms and conditions of probation.
2 Upon satisfactory completion of probation, the board shall convert the probationary certificate to
3 a regular certificate, free of conditions.

4 "(e) The proceedings under this article shall be conducted in accordance with
5 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,
6 and the board shall have all the powers granted therein. The action shall be final, except that the
7 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the
8 Code of Civil Procedure."

9 5. Section 4301 of the Code states in part:

10 "The board shall take action against any holder of a license who is guilty of
11 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
12 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
13 following:

14 " . . .

15 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
16 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
17 otherwise, and whether the act is a felony or misdemeanor or not.

18 " . . .

19 "(h) The administering to oneself, of any controlled substance, or the use of any
20 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
21 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
22 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
23 the public the practice authorized by the license.

24 " . . .

25 "(j) The violation of any of the statutes of this state or of the United States
26 regulating controlled substances and dangerous drugs.

27 "(k) The conviction of more than one misdemeanor or any felony involving the
28 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any

1 combination of those substances.

2 "(l) The conviction of a crime substantially related to the qualifications, functions,
3 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
4 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
5 substances or of a violation of the statutes of this state regulating controlled substances or
6 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
7 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
8 The board may inquire into the circumstances surrounding the commission of the crime, in order
9 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
10 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
11 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
12 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
13 meaning of this provision. The board may take action when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under Section
16 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
17 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
18 or indictment.

19 6. Section 4327 of the Code states:

20 "Any person who, while on duty, dispenses or compounds any drug while under
21 the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

22 7. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
24 self-use, except veterinary drugs that are labeled as such, and includes the following:

25 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
26 without prescription," "Rx only," or words of similar import.

27 "(b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar import, the

1 blank to be filled in with the designation of the practitioner licensed to use or order use of the
2 device.

3 "(c) Any other drug or device that by federal or state law can be lawfully
4 dispensed only on prescription or furnished pursuant to Section 4006."

5 8. Section 4060 of the Code states:

6 "No person shall possess any controlled substance, except that furnished to a
7 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
8 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
9 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
10 section shall not apply to the possession of any controlled substance by a manufacturer,
11 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
12 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
13 and address of the supplier or producer.

14 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
15 or a physician assistant to order his or her own stock of dangerous drugs and devices."

16 9. Section 490 of the Code states:

17 "A board may suspend or revoke a license on the ground that the licensee has been
18 convicted of a crime, if the crime is substantially related to the qualifications, functions,
19 or duties of the business or profession for which the license was issued. A conviction
20 within the meaning of this section means a plea or verdict of guilty or a conviction
21 following a plea of nolo contendere. Any action which a board is permitted to take
22 following the establishment of a conviction may be taken when the time for appeal has
23 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
24 granting probation is made suspending the imposition of sentence, irrespective of a
25 subsequent order under the provisions of Section 1203.4 of the Penal Code."

26 10. Section 118, subdivision (b), of the Code provides that the expiration of a
27 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
28 period within which the license may be renewed, restored, reissued or reinstated.

surveillance illegally taking Hydrocodone/Homatropine Elixirent from a pharmacy storeroom.

b. On March 25, 2004, Respondent was placed on three (3) years formal probation, and sentenced to 180 days in custody. The Court ordered that Respondent could serve the 180 days in a residential treatment program.

SECOND CAUSE FOR DISCIPLINE

(Violation of Statutes)

15. Respondent is subject to disciplinary action under section 4301(j) in that on or about August 11, 2003, he violated California and federal statutes regulating controlled substances and dangerous drugs, as more particularly described in paragraph 14, above.

THIRD CAUSE FOR DISCIPLINE

(Selling, Dispensing or Compounding Drugs While Under the Influence)

16. Respondent is subject to disciplinary action under sections 4301(h) and 4327 of the Code in that between on or about November 1, 2001, until on or about August 28, 2003, Respondent, while on duty as a pharmacist at Kaiser Permanente's Zion Avenue Pharmacy, sold, dispensed, or compounded drugs while under the influence of Hydrocodone, a dangerous drug.

///

///

///

///

///

///

///

///

///

///

///

///

1 PRAYER

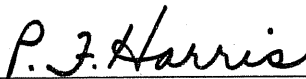
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Original Pharmacist License Number
5 RPH 40106, issued to RANDALL WOLFORD;

6 2. Ordering RANDALL WOLFORD to pay the Board of Pharmacy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 11/22/04

11
12 

13 PATRICIA F. HARRIS
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California

Complainant